

**REMARKS**

The present amendment is submitted in response to the Office Action mailed March 11, 2005. Claims 1 and 3-23 are currently pending in the application. By this amendment, Claims 1, 7, 14, 17, 18, 22 and 23 have been amended. No new matter or issues are believed to be introduced by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

**35 U.S.C. §101**

In the Office Action, claims 1 and 3-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Examiner maintains that the instant claims fail to recite the use of any type of technology (e.g., computer system) within the recited steps of the claimed method of recommending one or more available items. In response, independent Claims 1 and 7 have been appropriately amended to incorporate language which comports with the requirements of 35 USC 101. Applicants respectfully submit that independent claims 1 and 7 are no longer directed to non-statutory subject matter and are patentable for at least the following reasons.

Claims 1 and 7 recite the use of a computerized method performed by a data processor for performing distinct functions, and is, thus, statutory subject matter under 35 USC 101. Accordingly, Claims 1 and 7 are believed to satisfy the requirements for statutory subject matter under 35 USC 101.

Accordingly, it is respectfully requested that the rejection under 35 USC 101 of independent claims 1 and 7 be withdrawn, and independent claims 1 and 7 be allowed.

**35 U.S.C. §102(b)**

Claims 1 and 3-23 were rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent No. 5,758,257 (hereinafter Herz).

As per Claims 1, 14, 17, 22 and 23, the Examiner alleges that Herz discloses a computerized method for recommending one or more available items to a target user,

comprising the steps of: obtaining a history of selecting one or more available items by at least one third party (Herz at Col. 5, Ins. 24-54); partitioning a third party selection history into a plurality of clusters (Herz at Col. 5, lines 24-54); modifying a target user's history of selecting said one or more available items with one or more third party clusters to produce a modified target user's history (Herz Col. 49, lines 1-20); processing the modified target user's history to generate a target user profile, wherein the modified target user's history characterizes preferences of the target user as modified to reflect preferences of the third party (Herz at Col. 49, lines 1-20); generating a recommendation score for at least one of said available items based on said third party selection history (Herz at Col. 5, Ins. 5-20) and displaying the recommendation score to the target user (Herz at Col. 49, lines 1-20).

Applicants respectfully traverse the rejection of claims 1, 14, 17, 22 and 23, under 35 U.S.C. §102(b), however, Claims 1, 14, 17, 22 and 23 have been amended. It is respectfully submitted that claims 1, 14, 17, 22 and 23, as amended, are patentable over Herz for at least the following reasons.

Herz is directed to a system and method for making available the video programming and other data most desired by a customer. The "most desired" video programming and other data is made available to a customer by creating customized programming channels from all of the programming available at any time. From the customized programming channels, a customer's set top terminal creates "virtual channels" as a collection of the received programming data from one or more of the customized programming channels at any point in time for receipt on the customer's television.

In accordance with the method of Herz, a customer characterizes the attractiveness of each available source of video programming or data in an "agreement matrix". From the agreement matrix, one or more "virtual channels" of data customized to each customer, are determined. At any point in time, the one or more virtual channels include the video programming or other data which is predicted to be most desirable to the customer based on the customer's preferences.

To create customized programming channels, and virtual channels therefrom, one or more customer profiles are created for each customer. The customer profiles indicate the customer's preferences for predetermined characteristics (e.g., classification, category,

directors, actors and actresses) of video programs and may vary in accordance with time of day, week and/or customer mood. The customer profiles are determined from customer questionnaires, customer demographics, relevance feedback techniques, default profiles and the like. The customer profiles are compared with content profiles of the available video programming. Content profiles are determined from questionnaires completed by “experts” or customer panel or generated from the text of the video programs themselves and/or are determined by adopting the average of the profiles of those customers who actually watch the video program. Based on the comparison of customer and content profiles, one or more customized programming channels are created for transmission, and from those channels, each customer’s set top terminal may further determine “virtual channels” containing a collection of only those video programs having content profiles which best match the customer’s profile and hence are most desirable to the customer during the relevant time frame.

In the Office Action, the Examiner cites Herz at Col. 5, lines 25-54 for allegedly teaching the step of *Partitioning a third party selection history into a plurality of clusters*, as recited in Claims 1, 14, 17, 22 and 23.

Herz teaches at Col. 5, lines 25-54 a customer profile creation step for creating a plurality of customer profiles as being representative of the customer’s changing preferences for predetermined characteristics of video programs. The plurality of customer profiles are input into an agreement matrix where the different customer profiles for each customer are used in accordance with the time of day and of the week to reflect a customer’s preferences or moods during the course of the week.

Herz also teaches at Col. 5, lines 34-38 that, the customer profile creation step further comprises the step of clustering customer profiles for combinations of customers expected to view the video at a particular customer location at particular times on particular days.

Regarding Claim 1, and in particular the Claim 1 limitation of *partitioning a third party selection history into a plurality of clusters*.

Claim 1 has been amended to better define Applicant’s invention over Herz. Claims 7, 14, 17, 18, 22 and 23 now recite limitations and/or features which are not disclosed by Herz.

In particular, Applicant's presently amended independent claim 1 now recites:

*Partitioning a third party selection history into a plurality of clusters wherein each cluster is comprised of a segment of tangible items that exhibit a characteristic similarity*

Claim 1, as amended, is believed to be patentably distinguishable over the reference for a number of reasons. First, the clusters of Herz are comprised of intangible items (i.e., “**customer profiles**”) while the clusters of the invention are comprised of tangible items. Second, the customer profiles which make up a cluster in Herz exhibit a characteristic dissimilarity while the clusters of the invention exhibit a characteristic similarity. Third, the clusters in Herz are not comprised of a single third party history, but instead are comprised of the customer profiles of at least two or more parties (e.g., Mother and Father, multiple children). Each distinction is addressed in greater detail as follows.

Regarding the first distinction, the customer profiles of Herz are intangible items that reflect a predetermined characteristic of a video program, selected as a customer preference. Such “characteristics” may include any descriptive feature suitable in describing particular video programs, such as classification category; directors; actors and actresses; degree of sex and/or violence – See Herz at Col. 4, lines 59-67. By contrast, the clusters of the invention are comprised of tangible items, such as television programs or viewer purchases. This is true because the automatically generated recommendations of the invention are based on an evaluation of user behavior, such as a viewing history or a purchase history – See specification at par. 18.

Regarding the second distinction. In Herz, each profile in a cluster typically reflects a characteristic dissimilarity with every other profile in the cluster. Using Applicant's example from above, a cluster is comprised of a mother's profile and a father's profile, the mother's profile may indicate a preference for “romantic stories” while the Dad's profile indicates a preference for “Sports”. This characteristic dissimilarity of the profiles of a cluster, as taught in Herz, occurs because the clusters in Herz are grouped on the basis of location, time and day, (e.g., who is watching what, at what time and on what day), while the clusters of the invention are grouped based on a characteristic similarity of tangible items. The specification recites at par. 19, *each cluster*

*contains a number of television programs (data points) that are similar to one another in some way.* For example, each program in the cluster may be of the "drama" genre – See spec. at par. 21.

Regarding the third distinction, the clusters of Herz are comprised of multiple individuals, (e.g., mother and father, three children, etc.). By contrast, the clusters in the present invention are comprised of a segment of tangible items of a single third party. Specifically, a viewing history of a selected third party, such as a friend, colleague or trendsetter is processed into a clustered third party viewing history – See Specification at par. 19.

Based at least upon the above, it is respectfully submitted that at least the limitations and/or features of independent Claim 1 is believed to be patentably distinct over Herz. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of claim 1 is respectfully requested.

Claims 2-6 depend from independent Claim 1 and therefore contain the limitations of Claim 1 and are believed to be in condition for allowance for at least the same reasons given for Claim 1 above. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of Claims 2-6 is respectfully requested.

Independent Claims 7, 14, 17, 18, 22-23, as amended recite similar subject matter as Claim 1 and therefore contain the limitations of Claim 1. Hence, for at least the same reasons given for Claim 1, Claims 7, 14, 17, 18, 22-23 are believed to recite statutory subject matter under 35 U.S.C. §102(b).

Claims 8-13, 15-16, 19-20 depend from independent Claims 7, 14 and 18, respectively, and therefore contain the limitations of Claims 7, 14 and 18 and are believed to be in condition for allowance for at least the same reasons given for Claims 7, 14 and 18 above. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of Claims 8-13, 15-16, 19-20 is respectfully requested.

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### Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 and 3-23 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Mr. Lawrence Liberchuk, Esq., Intellectual Property Counsel, Philips Electronics North America, at 914-333-9602..

Respectfully submitted,



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